

DEQ's Renewable Energy Permit by Rule: Background & Status Report

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For
Offshore/Coastal Wind RAP Meeting
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VIRGINIA ACTS OF
ASSEMBLY -- 2009
RECONVENED SESSION
CHAPTER 808 & 854

Virginia General Assembly
**“Small Renewable Energy
Projects” Legislation**
HB 2175 & SB 1347
Approved: April 8, 2009





Directs DEQ to develop by regulations

**“permits by rule . . . for the
construction and operation of
small renewable energy projects,**

**including such conditions and
standards necessary to protect the
Commonwealth’s natural
resources”**



Statutory Goals:

- ✚ **Promote renewable energy** – provide certainty, timeliness, reasonable regulatory requirements
- ✚ **Protect natural resources** – provide enforceable standards that are protective of wildlife & historic resources at/near project site



What is a
**“small renewable energy
project”?**



100 MW



An electrical generation facility
producing electricity from . . .

♻️ biomass

♻️ energy from waste < 20 MW

♻️ municipal solid waste





An electrical generation facility
producing electricity from ...

***** WIND *****

sunlight

falling water

motion

tides

geothermal power

biomass

energy from waste

municipal solid waste

Statutory Deadlines for Permits by Rule:

January 1, 2011, for WIND

July 1, 2012, for all others



Timeline

WIND:

- July '09 to January '10: 15 Regulatory Advisory Panel (RAP) meetings and 11 inter-agency meetings convened
- January: DEQ Director approved draft reg
- February 18 – June 1: Executive Review
- Public Comment and Public Hearing



Proposed Wind PBR:

9 VAC 15-40

Proposed Text

<http://www.townhall.virginia.gov/L/ViewXML.cfm?textid=4259>

Agency Statement - Town Hall Document (TH-02)

<http://www.townhall.virginia.gov/L/viewstage.cfm?stageid=5451&display=documents>



Public Participation Original Wind PBR

- ✿ Public Comment Period:
June 21 through August 20, 2010
- ✿ Public Hearing:
August 3, 2010
DEQ's Piedmont Regional Office



Current Practice:

- ✿ Developer applies to SCC for individual permit
- ✿ Environmental agencies submit recommendations to SCC re proposed site
- ✿ SCC decides what environmental requirements to include in order



New System:

- ✿ Developer applies to DEQ for permit by rule (PBR)
- ✿ Environmental requirements are set forth “up front” in regulation for all sites
- ✿ If applicant meets requirements and submits required certifications, then DEQ notifies applicant that project is authorized under PBR.



Note . . .

- ✿ *Neither current practice nor DEQ's new PBR approach abrogates applicant's need to obtain state regulatory environmental permits.*



WHAT IS THIS “PERMIT BY RULE”?





A Permit by Rule (PBR) is . .

- ✿ Expedited permitting process used by DEQ for certain solid waste facilities
- ✿ Regulation stating “up front” the criteria that applicant must meet
- ✿ Requirement that applicant submit docs/certification that has met requirements
- ✿ Requirement that DEQ review submission for completeness & adherence to reg
- ✿ If complete, then DEQ notifies that project is authorized under the PBR



A Permit by Rule is **not** . . .

- ✪ An individual permit
- ✪ Site-specific
- ✪ Based on a case-by-case technical analysis



Statutory Permit by Rule Requirements



PBR Criteria

10.1-1197.6.B

- ✚ Notice of intent
- ✚ Local-government certification
- ✚ Interconnection studies
- ✚ Final interconnection agreement
- ✚ PE certification of generation capacity
- ✚ Analysis of impacts on NAAQS



PBR Criteria (continued)

- ✚ **Analysis of impact on natural resources**
- ✚ **Determination of likely significant adverse impacts; mitigation plan**
- ✚ PE certification of design
- ✚ Operating plan
- ✚ Site plan
- ✚ Certification re environmental permits
- ✚ Public meeting
- ✚ Public comment period



DEQ's Operative Provisions

10-1:1197.6.B.7:

Applicant shall provide

“an **ANALYSIS** of the
beneficial and adverse impacts
of the proposed project on
NATURAL RESOURCES”



Operative provisions (continued)

10.1-1197.6.B.8:

- (1) **Department determines**
if foregoing analysis
“indicates that
significant adverse impacts
to **wildlife**
or **historic resources**
are **likely**”



If so, then . . .

(2)

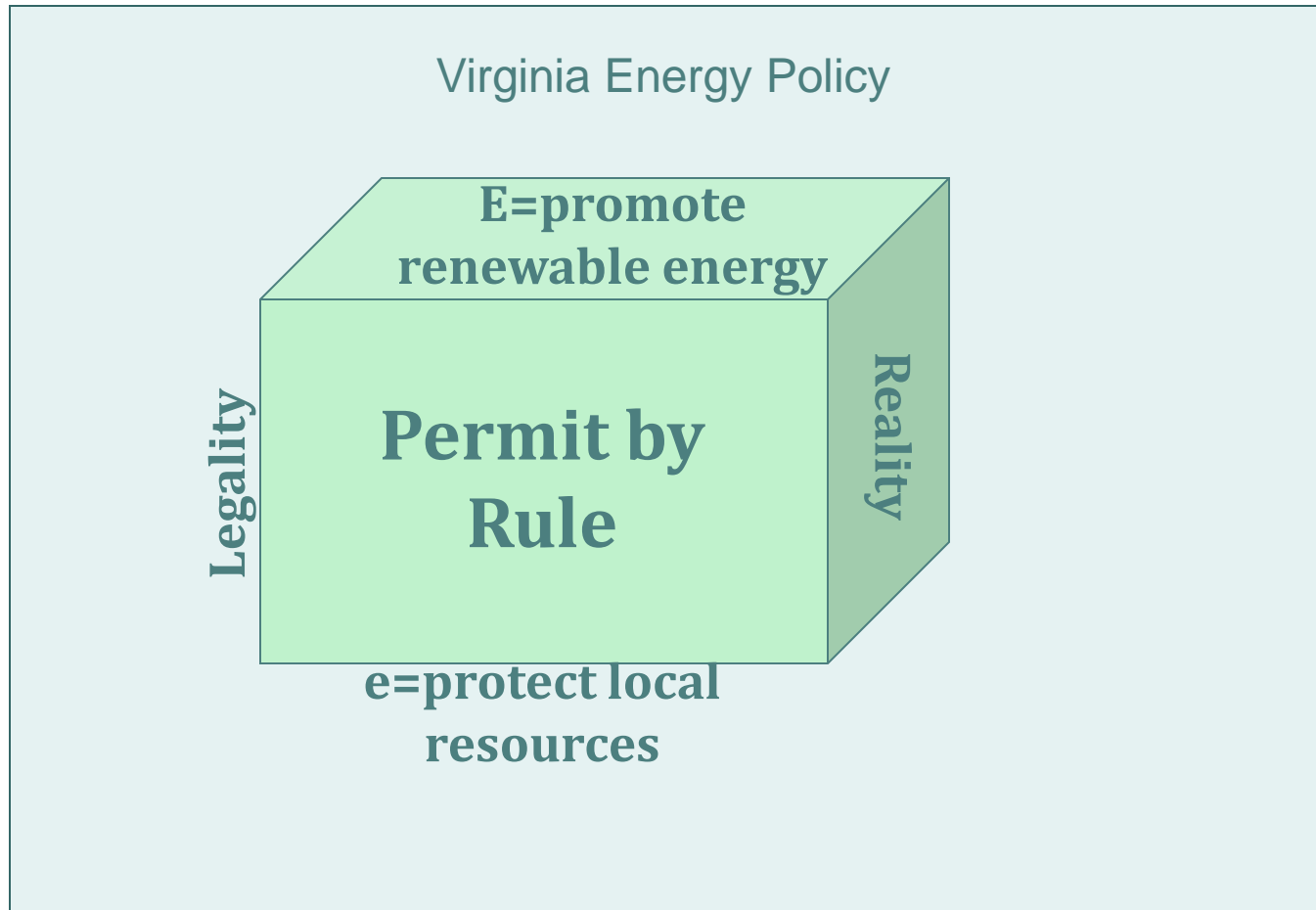
 **MITIGATION PLAN**

 **MEASURE EFFICACY**

(post-construction monitoring)



“Small Renewable Energy Project” PBR





Original Wind Regulatory Advisory Panel (RAP)



State Government Representatives

- DCR
- DGIF
- DHR
- VMRC
- DEQ
- DMME
- DOF
- VDACS
- Deputy Secretary of Natural Resources



Original Wind Regulatory Advisory Panel (RAP)

Industry

- Independent Wind Developers – 2
- Utility Wind Developers – 2

Environmental Organizations – 4

Academia – 1

Local Government – 1



After long deliberations . . .

the RAP AGREED

on all

but 3 issues!!!



Those 3 issues . . .

- ✚ What exemption/notice requirement should apply for projects 5 MW and less
- ✚ What wildlife – other than bats – should constitute a mandatory trigger for mitigation
- ✚ What avian field studies should be done in coastal zone



What
do stakeholders
potentially achieve
in the proposed
Wind PBR?



Industry

- ✿ **certainty** – requirements spelled out in advance in PBR
- ✿ **timeliness** (90 days)
- ✿ **reasonableness** – interpreted statute as reasonably as possible as possible.
- ✿ **channels of legal redress** – clearly set forth in Administrative Process Act



Environmental Interests

At the cutting edge among states
in having across-the-board ...

- ✚ **Analysis of natural resources at/near the project site**
- ✚ **Mitigation for wildlife and historic-resource impacts**
- ✚ **Required post-construction monitoring**



“Sister” State Agencies

- ✿ **All had a voice** on the RAP in developing the wind PBR proposal
- ✿ Pursuant to the 2009 statute, DEQ will **consult SNR agencies** before rendering permit-approval decision



Local Governments

The RAP, OAG, and DEQ agreed:

health and safety issues, land-use and zoning are not encompassed by the 2009 statute

All concurred:

these issues remain the subject of local-government authority, as VACO recommended



Our special challenges:

- ✿ One-size-fits-all regulation vs. site-specific resource protections
- ✿ Authority vested in DEQ Director – a first
- ✿ Substantive authority/expertise vested in other state agencies; however, regulatory authority & extensive experience in administering permit programs reside in DEQ
- ✿ Most of experience in wind-energy development is outside state government
- ✿ RAP must complete work on original wind PBR in roughly 5 months



There are no "bad guys" in our RAP
discussions.

Everyone is trying to do something
good for energy and the environment!



***What's
next?***



Offshore/Coastal Wind RAP & NOIRA

RAP Notice:

Deadline: April 15, 2010

<http://www.townhall.virginia.gov/L/ViewNotice.cfm?gnid=269>

NOIRA:

Executive Review underway

<http://www.townhall.virginia.gov/L/ViewStage.cfm?stageid=5469>

Complete work ASAP – catch up with original
Wind PBR, as soon as possible



DEQ's offshore wind PBR will build on...

- ✿ Work of original Wind RAP
- ✿ VMRC's leasing and permit requirements
- ✿ Other existing requirements
 - Army Corps



And today we begin . . .

***You are DEQ's
Offshore/Coastal
Wind RAP***

Thank You!



Stay tuned . . .

for

Tony's presentation!



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